

APR 13 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

7 April 1994

Federal Communications Commission
Policy and Rules Division
Mass Media Bureau
1919 M. Street, N.W.
Rm. 8210, Legal Branch
Washington, DC 20554

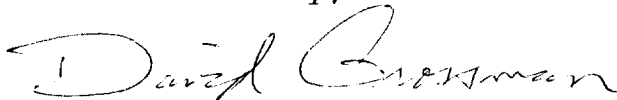
Ref: 8310-200

Gentlemen:

In accordance with the instructions contained in the Federal Register, Vol. 39, No. 173 (1974) ¶ 46, please find enclosed an original and 14 copies of a petition for rule making to revise the network non-duplication rules.

Thank you for your consideration.

Yours sincerely,



David G. Grossman

200 Wall Street
Corning, NY 14830

CC: Congressman Amory Houghton

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14
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APR 13 1994

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Petition for Rule Making to Revise)
the Network Non-duplication Rules)

PETITION FOR RULE MAKING

I, David G. Grossman, a private citizen, do hereby petition the Federal Communications Commission to commence a rule making proceeding to revise its rules governing the duplication of broadcast network programming on cable television systems.

INTRODUCTION

The present syndicated exclusivity and revised network non-duplication rules provides a means for television broadcasters to block the carriage of identical programming offered by more distant stations via cable. A local broadcaster must first obtain exclusive exhibition rights within its market. That station may then request deletion of a distant station's duplicative network programming at any time that it is presented.

By adopting these rules, the Commission had hoped that consumers would be offered a wider variety of shows from which to choose, since in many cases, cable operators would provide alternative programming. In addition, it was the Commission's belief that syndicated exclusivity and expanded network non-duplication rights would lead to an increase in the quality and quantity of programming available to consumers.

The current regulations do not, however, provide a definition of "identical" programming. The individual components that comprise a broadcast signal, such as the audio portion (monaural, stereo, SAP¹, CC², etc.) or the visual portion (color, black & white, HDTV³, etc.) are left unaddressed. The lack of technical definitions to determine the equivalence of programming has led to a situation where a program of lesser quality may be used to block a signal of greater quality as perceived by the consumer.

To afford exclusivity rights to a broadcast station without requiring the station to provide a broadcast signal of true equivalence removes the incentive for that station to upgrade its equipment. The station is therefore unable to provide those up-to-date features that are offered by the program originators. Such a case exists on the available cable network here in the City of Corning, NY. Our local ABC affiliate only provides a monaural audio signal for programs like Star Trek. This station has exercised its exclusivity rights to prevent a Buffalo, NY station from providing the program with the full stereo signal.

This situation results in a non-equivalent situation for me as a viewer. I am unable to enjoy the three-dimensional effects of stereo surround sound for which I made a personal investment in equipment with the capability to receive such signals. I,

1. Second Audio Program
2. Closed Caption
3. High Definition Television or other future formats

therefore, do not consider the local ABC affiliate to be providing me with identical programming.

Accordingly, I am petitioning the Commission to initiate a rule making proceeding to revise the network non-duplication rule to include the audio portion of programming in determining equivalence. Further, the Commission should consider other aspects of equivalence of broadcast signals such as SAP or CC which may be of importance to specific viewers.

A. The Importance of Enhanced Features

Yesterday's television sets are being replaced currently in American homes by an impressive array of home theater equipment: large screen displays, audio/video receivers, surround-sound processors, Dolby Pro Logic circuitry, along with five and six speaker audio systems including separate channels for front left, center, and right speakers as well as rear speakers and optional subwoofer. This trend toward more sophisticated visual and audio systems reflects a desire by the viewing public to enhance their enjoyment of full feature movies, broadcast concerts, sporting events, and other televised entertainment and educational programs.

It is recognized today that the soundtrack is not just a carrier of the dialogue or a conveyor of "background" music but rather an active component of the entire program. As a car passes from left to right on the screen, so does the sound of the car; or as a helicopter flies overhead from front to back, its sound retreats behind the viewer. The audio/video receiver

can produce specialized sound effects to recreate the acoustics of a concert hall, jazz club, or football stadium. The system creates an ambiance and reverberation than enhances the depth and adds realism to the entire program. The "sound of video" has become an integral part of today's program and deserves to be recognized for enriching the quality and expanding the dimensions of the home viewing experience.

B. Supporting Documents

Attached are copies of prior correspondence on this issue which I have had with the Commission. In addition, there is appended a letter of support from Congressman Amory Houghton of the 31st District.

CONCLUSION

For the foregoing reasons, I respectfully request that the Commission institute a rule making proceeding to eliminate the application of the syndicated exclusivity and network non-duplication rules to stations which do not provide a broadcast signal of true equivalence and that the audio portion of the program be considered in determining equivalence.

Respectfully submitted,



David G. Grossman, MS, PhD

April 7, 1994

200 Wall Street
Corning, NY 14830
607-962-8593

1 March 1993

Mr. James Quello
Acting Chairman FCC
Main Building, 1919 M Street, N.W.
Washington, DC 20554

Dear Mr. Quello:

I am upset by an FCC regulation that in effect interferes with my enjoyment of several television programs including one of my favorites -- **Star Trek**. I am referring to the rules governing nonduplication protection and syndicated exclusivity. Let me explain how this developed.

Recently, I purchased a stereo surround sound system hoping to enjoy the three-dimensional sound effects offered by many of today's TV programs. I had been aware of the block-out privileges granted to local broadcast stations to give preference for local advertising over more distant stations offering identical programming. It was only after I was prepared to receive the stereo signal that it struck home: the local station did not carry the stereo signal, which for me results in a non-equivalent situation.

I have reviewed the language of Section 76.92 which does not consider the audio portion of the program in terms of non-duplication priority. Our local ABC affiliate only provides a monaural audio signal for programs like **Star Trek**. Yet under these rules, they have the right to block-out another ABC station carried by our cable which does furnish the full stereo signal.

I am curious to know if the FCC was aware of this implication resulting from the exclusivity rules and whether the authors of the enabling legislation had taken the equivalence of audio signals into consideration. It is hard for me to believe that it was anyone's intention to inhibit the public's enjoyment of the programming as the original providers intended.

I look forward to your comments on the exclusivity regulations.

Yours sincerely,



David G. Grossman, MS, PhD

200 Wall Street
Corning, NY 14830

CC: Congressman Amory Houghton
Patrick Parish, Station Manager, WENY
John Owen, Manager, Corning Newchannels Cable

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

AUG 3 1993

IN REPLY REFER TO:
8370-MF
CM930345

Mr. David G. Grossman, MS, PhD
200 Wall Street
Corning, NY 14830

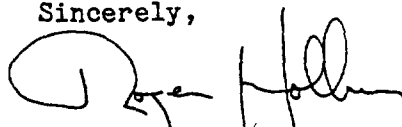
Dear Mr. Grossman:

Chairman James Quello has asked that I respond to your letter of March 1, 1993, in which you complain about the rules governing syndicated exclusivity and network nonduplication. Specifically, you object to the application of these rules in situations where the local station broadcasts a program in monaural and exercises its exclusivity rights against a more distant broadcaster that offers the same program in stereo. You ask the Commission to look into this matter.

The Commission adopted syndicated exclusivity rules and revised network non-duplication rules which may have the effect of limiting duplication of both syndicated and network programming, which includes the audio portion of the program. These rules went into effect on January 1, 1990. They permit broadcasters to negotiate with program suppliers to obtain exclusive rights to programming. A local television broadcaster, by proper request to a cable operator, may require deletion of any syndicated or network program on a distant broadcast signal carried on that cable system if the local broadcast station has secured the exclusive rights to exhibit that programming in its market. Local network affiliates, which have long had the right to request cable deletion of a distant station's simultaneously duplicated network programming, now have the right to request deletion of a distant station's duplicative network programming at any time that it is presented. The presence or absence of stereo sound is not relevant to the application of these rules.

Note that the obligations these rules impose upon cable operators apply only to selected programming. When a cable television system carries a local and a distant television station, both of which broadcast identical network programs or syndicated programs, the cable system must delete the signal of the distant station if requested to do so by the local network affiliate or local broadcaster asserting program exclusivity rights. In lieu of the distant station's programming, the cable operator may substitute alternative programs. Our rules do not require the cable system to delete carriage of the more distant station in its entirety. For your reference, I am enclosing a factsheet explaining the Commission's syndex rules.

Sincerely,



Roger Holberg, Acting Chief
Complaints and Investigations Branch
Enforcement Division
Mass Media Bureau

Enclosures

12 August 1993

Mr. Roger Holberg
Acting Chief
Complaints and Investigations Branch
Enforcement Division
Mass Media Bureau
Federal Communications Commission
Washington, DC 20554

Ref: 8310-MP CM930345

Dear Mr. Holberg:

Your explanation of the syndicated exclusivity and non-duplication rules captures the essence of my problem succinctly, but I must take exception with the position that "the presence or absence of stereo sound is not relevant to the application of these rules." My contention is that the same program (let's take my prior example of *Star Trek*) broadcast in monaural sound is not equivalent to one broadcast in stereo surround sound. The rules were established for situations where the individual programs are identical, hence the language non-duplication. Is it the FCC's contention that the soundtrack is not an essential component of the program or that the three-dimensional effects of stereo surround do not enhance the viewer's enjoyment?

The FCC had hoped that over the long run, these rules would "lead to an increase in the quality and quantity of programming available to consumers." Unfortunately in the example I have cited, the application of these rules has led to a situation of lesser quality. Wouldn't it make sense that in order for the local broadcast station to exercise its right to exclusivity, it would first have to provide a signal of true equivalence. If, for example, stations only provided a picture in black and white instead of color, there would be a furor of protest! Likewise, the equivalence of signal should also include the audio portion of the program. The guiding principle here should be that the public's enjoyment of the individual program should in no way be impaired by application of the syndex rules.

In light of the above discussion, I would like to know if the FCC would be willing to amend the syndex rules to include the audio portion of programming in determining equivalence.

Thank you for your consideration.

Yours sincerely,


David G. Grossman, MS, PhD

200 Wall Street
Corning, NY 14830

AMO HOUGHTON
31ST DISTRICT, NEW YORK

COMMITTEE:
COMMITTEE ON WAYS
AND MEANS
SUBCOMMITTEE ON OVERSIGHT
RANKING MEMBER
SUBCOMMITTEE ON
SOCIAL SECURITY



Congress of the United States
House of Representatives

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CAUCUS
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CAUCUS
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OFFICE OF
TECHNOLOGY ASSESSMENT

February 23, 1994

Ms. Linda Solheim
Director, Office of Legislative Affairs
Federal Communications Commission
1919 M Street
Washington, D.C. 20554

Re: Mr. David G. Grossman
Corning, New York

Dear Ms. Solheim:

I was recently contacted by David Grossman, about the problem he is having with the Federal Communications Commission. Here's a copy of his letter to me.

As explained in the letter, Dr. Grossman has been in contact with your office about the problem. I think he has a pretty good point, and I hope something can be done about this.

Would you be willing to look into this, and assist Dr. Grossman, and the other Corning/Elmira residents who are affected by this FCC regulation? Any help you can offer them is greatly appreciated. All future correspondence can be sent to the attention of my staff assistant, Bob Van Wicklin, at our Corning District Office, 32 Denison Parkway West, Corning, New York 14830; (607) 937-3333.

Thank you.

Sincerely,

Amo Houghton

AH/bvw
enc.

cc: Dr. David Grossman, 200 Wall Street, Corning, New York 14830